

## **BEFORE THE DIVISION OF INSURANCE**

### **STATE OF COLORADO**

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#### **FINAL AGENCY ORDER O-07- 067**

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#### **IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ING USA ANNUITY AND LIFE INSURANCE COMPANY,**

##### **Respondent**

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**THIS MATTER** comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of ING USA Annuity and Life Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated November 30, 2006 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

##### **FINDINGS OF FACT**

1. At all relevant times, the Respondent was licensed by the Division as a life, accident and health insurance company.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on November 30, 2006, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2005 to December 31, 2005.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiner observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners' handbook. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiner prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiner finds reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

### **CONCLUSIONS OF LAW AND ORDER**

8. Unless expressly modified in this Final Agency Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue B1 concerns the following violation: Failure to provide broker/dealers and registered representatives, at least annually, a notification of the requirements to obtain company approval of all advertisements prior to use and the most serious consequence when not obtaining such approval. The Respondent shall provide evidence that it has corrected its procedures to ensure that it provides broker/dealers and registered representatives, at least annually, a notification of the requirements to obtain Respondent's approval of all advertisements prior to use, and the most serious consequence that may result by not obtaining the required prior approval, in compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue G1 concerns the following violation: Failure to make reasonable efforts to obtain suitability information, and failure to develop and maintain an adequate system to supervise and monitor the recommendations of authorized producers to ensure compliance with Colorado insurance law. The Respondent shall provide evidence that it has corrected its procedures to make reasonable efforts to obtain suitability information and to develop and maintain an adequate system to supervise and monitor the recommendations of authorized producers to ensure compliance with Colorado insurance law.
11. Issue H1 concerns the following violation: Failure, in some cases, to advise the contract owner of the right to receive information regarding the existing

policy or contract values. The Respondent shall provide evidence that it has corrected its procedures to advise the contract owner of the right to receive information regarding existing policy or contract values to ensure compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

12. Issue J1 concerns the following violation: Failure to calculate interest up to the date that death benefits were actually paid. The Respondent shall provide evidence that it has corrected its procedures to calculate interest up to the date that death benefits were actually paid. Additionally, Respondent shall perform a self audit and pay any additional interest due on all death claims by correctly calculating interest up to the date the death benefits were actually sent to the beneficiary for the period beginning January 1, 2005 to March 30, 2007. Respondent shall submit a summary of the findings to the Division on or before June 29, 2007.
13. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of five thousand and no/100 dollars (\$5,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
14. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related Order.
15. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies', presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
16. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the

Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.

17. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the Report dated November 30, 2006, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 30th day of March, 2007.



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Marcy Morrison  
Commissioner of Insurance

**CERTIFICATE OF MAILING**

I hereby certify that on the 30th day of March, 2007, I caused to be deposited the **FINAL AGENCY ORDER NO. O-07-067 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ING USA ANNUITY AND LIFE INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Harry Stout, President  
ING USA Annuity and Life Insurance Company  
909 Locust Street  
Des Moines, IA 50309

Linda Senker, Chief Compliance Officer, Vice President  
ING USA Annuity and Life Insurance Company  
909 Locust Street  
Des Moines, IA 50309

A handwritten signature in black ink, appearing to read "Dolores Arrington". The signature is fluid and cursive, with the first name "Dolores" being more prominent than the last name "Arrington".

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Dolores Arrington, AIE,AIRC,ACS,MA.  
Market Regulation Section  
Division of Insurance